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Submitted electronically to tracy.swalwell@iid.iowa.gov

April 20, 2020

Ms. Tracey Swalwell
Iowa Insurance Division
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, Iowa 50309

Re: Rule Making Related to Best Interest Standard for Insurance and Securities Professionals

Dear Ms. Swalwell:

On behalf of our members, the Insured Retirement Institute (“IRI”)¹ appreciates the opportunity to provide the Iowa Insurance Division (the “Division”) with comments on the proposed amendments to Chapter 15 of the Iowa Administrative Code (“IAC”), “Unfair Trade Practices,” and Chapter 50 of the IAC, “Regulation of Securities Offerings and Those Who Engage in the Securities Business.”

IRI and our members have long supported the creation of a workable best interest standard for financial professionals and therefore, in this letter, we offer our support for the proposed best interest standards for insurance and securities professionals. We have concerns, however, about potential inconsistencies between federal rules and the proposed amendments to Chapter 50 of the IAC. Our concerns are identified and explained below, along with our recommendations to modify the proposal to ensure consistency across jurisdictions. As discussed below, we also believe the Division should postpone its public hearing on the proposal, currently scheduled for April 28, 2020.

In addition to providing these written comments, IRI respectfully requests the opportunity to provide oral testimony during the public hearing, whether held on April 28 or some other future date.

¹ IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

1. The Division Should Adopt the Best Interest Standard for Insurance Producers as Proposed.

The proposed amendments to Chapter 15 of the IAC are based on the 2020 version of the NAIC Suitability in Annuity Transactions Model Regulation (the “NAIC Model”). As you know, the NAIC Model requires insurance producers to act in their clients’ best interest when recommending an annuity and requires insurers to supervise recommendations so that the insurance needs and financial objectives of consumers are appropriately addressed.

In the interest of ensuring consistency with the NAIC Model, we respectfully offer the following suggestions for the Division:

- a. The Division’s proposal tracks the NAIC Model’s formulation of the best interest standard as requiring that producers make annuity recommendations “without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest.” By contrast, the “Purpose and Summary” section of the preamble to the proposal states that producers must “put the consumer’s interests first.” To avoid any confusion as to the formulation of the standard, we would encourage the Division to use the language from the rule text when discussing the standard in the preamble to the final rule.
- b. The NAIC Model includes a drafting note following Section 6.C(2)(h) to clarify that the intent of that section is not to broadly prohibit general incentives to sell a particular company’s products as long as those incentives place no emphasis on any particular product. We believe this is critically important guidance, and we therefore encourage the Division to incorporate this point into the preamble to the final rule.

We strongly support uniform adoption, implementation, and enforcement of the NAIC Model and therefore fully support this portion of the proposal. We commend the Division for taking prompt action to ensure that Iowa consumers are covered by the latest enhancements to the NAIC Model, and we urge your fellow insurance regulators across the country to follow the Division’s lead. In addition to the obvious benefits for insurers and producers in terms of managing compliance with state regulations and the costs associated with compliance, uniformity is critical to ensure that all Americans are afforded the same level of consumer protection across the states.

Finally, for the avoidance of any doubt, we respectfully urge the Division to promptly finalize this portion of the proposal, even if the Division determines that additional time is needed to address comments it may receive on the proposed best interest standard for securities professionals.

2. The Division Should Revise the Proposed Best Interest Standard for Securities Professionals to More Fully Align with Regulation Best Interest.

In the purpose and summary, the Division states that the proposal is intended to align with Regulation Best Interest (“Reg BI”),² which was adopted by the U.S. Securities and Exchange Commission (“SEC”) in mid-2019. IRI appreciates and supports this effort, and we recognize that, to a significant degree, the proposal achieves this goal. As described below, however, there are seemingly modest but highly

² Regulation Best Interest, Exchange Act Release No. 34-86031, 84 FR 33318 (June 5, 2019) (“Reg BI Adopting Release”).

consequential distinctions between Reg BI and the proposed amendments to Chapter 50 of the IAC. If these distinctions are not effectively addressed, the Division's proposal would end up contributing to the creation of a patchwork of inconsistent, conflicting, or duplicative rules. In addition, we note that a violation of the proposed amendments to Chapter 50 of the IAC would be deemed an act, practice or course of business which operates or would operate as a fraud or deceit, a manipulative, deceptive or other fraudulent scheme, or device, and as such, a final order by the State finding such a violation would subject firms and financial professionals to collateral consequences with other state and federal regulators, including statutory disqualification under various provisions of the federal securities laws. As such, we respectfully request that the Division consider providing a clear exception or safe harbor for federally regulated broker-dealers and registered representatives acting in compliance with Reg BI. In our view, this would be the most clear and direct way to avoid duplication and inconsistency.

Our most significant concern, and one that cannot be addressed through simple modifications, is that the Division's proposal does not reflect the extensive and important guidance that has been and will be provided by the SEC and FINRA to help federally-regulated firms and financial professionals comply with their obligations under Reg BI. This guidance can be found in the adopting release for Reg BI, in the Risk Alerts issued by the SEC's Office of Compliance Inspections and Examinations earlier this month, and in FAQs and other documents posted on the SEC and FINRA websites. We recognize that the Division will likely be hesitant to expressly adopt such a voluminous and dynamic body of guidance issued by other regulators. Assuming we are correct in making this assumption, we believe an exception or safe harbor for federally regulated firms and advisors is the only way to reconcile this significant gap between Reg BI and the Division's proposal.

Turning now to more specific distinctions between the Division's proposal and Reg BI, we are particularly troubled by the requirement in proposed section 191-50.104(3)(a)(5) that the broker-dealer or agent must "have a reasonable basis to believe that prior to or at the time of the recommendation the retail investor has been reasonably informed of the basis of the recommendation and the potential risks, rewards, and costs associated with the recommendation." By contrast, the SEC expressly stated in the adopting release that Reg BI "does not require documentation of the basis for believing a particular recommendation was in a particular retail client's best interest."³

We recognize that this requirement is expressly included in the NAIC Model and in the Division's proposed amendments to Chapter 15 of the IAC, and we generally agree that consumers should understand why their financial professional is recommending a particular transaction. However, the inclusion of this requirement in the Division's proposed amendments to Chapter 50 of the IAC would, in effect, require the development and delivery of an additional disclosure document for every single recommended securities transaction. This is manageable and meaningful on the insurance side, where an individual consumer will typically engage in relatively few transactions in any given year. However, compliance with this requirement – including recordkeeping and supervision thereof – will be extremely burdensome and costly for firms in the securities space, where investors can engage in hundreds or even thousands of transactions every year. Moreover, the basis for recommendations of equities, mutual funds, and other securities will often be very similar (e.g., the recommended security is

³ 84 FR 33379.

consistent with the investors' goals and objectives, such as growth or safety), meaning that investors would repeatedly receive identical or nearly identical disclosures. Before long, many investors would simply disregard these boilerplate-like disclosures, leaving firms and financial professionals with a difficult and expensive regulatory obligation with a minimal investor benefit.⁴

Based on the foregoing, if the Division is unwilling to provide an exception or safe harbor for federally regulated entities, we respectfully request that the Division remove this requirement to disclose the basis for every recommendation made to Iowa investors.

In addition to the foregoing, we have three further comments on the proposed amendments to Chapter 50 of the IAC:

- a. The Division's proposed definition of "retail investor" is nearly identical to the Reg BI definition of "retail customer" but omits a key element from that definition. Under Reg BI, "retail customer" refers only to the recipient of a recommendation who actually uses the recommendation for personal, family or household purposes. This is a critical factor, and we respectfully request that the Division revise its definition of "retail investor" to fully align with the Reg BI formulation.
- b. The NAIC Model and the proposed amendments to Chapter 15 of the IAC expressly state that they do not create or imply a private cause of action for violations. This is necessary to ensure that the rules are enforced in a manner that is consistent with the regulatory intent, and we respectfully urge the addition of similar language to the proposed amendments to Chapter 50.
- c. The proposal does not appear to specify a date by which broker-dealers and registered representatives would need to achieve compliance with these new rules. The requirements and conditions included in the proposal are complex and would require significant information technology re-design and build outs to support. Therefore, we respectfully request that the proposal be revised to provide sufficient time for firms and financial professionals to develop and implement the policies, procedures, and systems changes necessary to achieve compliance.

3. The Division Should Extend the Comment Period and Postpone the Public Hearing on the Proposed Best Interest Standard for Securities Professionals Due to the COVID-19 Pandemic.

Our members and the consumers they serve are facing urgent and immediate demands as a result of the COVID-19 pandemic. Resources are being stretched far beyond ordinary limits for many companies and individuals. If the Division closes the public comment period and holds the public hearing as currently scheduled on April 28, it will undoubtedly miss out on the opportunity to receive valuable and significant

⁴ We also believe the inclusion of this requirement could give rise to a potential legal challenge against the proposal based on federal preemption under the National Security Markets Improvement Act, Public Law 104-290, Oct. 11, 1996, available at <https://www.congress.gov/104/plaws/publ290/PLAW-104publ290.pdf> ("NSMIA") As you know, NSMIA prohibits states from imposing recordkeeping requirements on broker-dealers beyond those established under the federal securities laws.

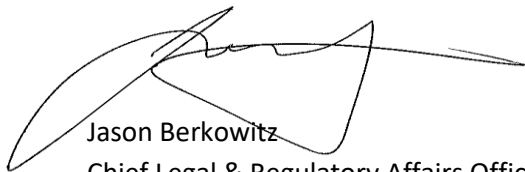
feedback from interested parties who simply cannot allocate resources to the development of written comments or verbal testimony on the proposal.

Based on the foregoing, we respectfully request that the Division extend the duration of the comment period and postpone the public hearing for at least 90 days, or until such time as interested parties can return their focus to matters unrelated to the pandemic. We do note, however, that this request does not cover the proposed amendments to Chapter 15 of the IAC, as those provisions have already been subject to extensive input from interested parties through the NAIC process. As such, we are only requesting this extension/postponement with respect to the proposed amendments to Chapter 50 of the IAC.

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Thank you again for the opportunity to share our views on this important subject. Please contact the undersigned if you have questions about anything in this letter, or if we can be of any further assistance in connection with this important regulatory effort.

Sincerely,



Jason Berkowitz
Chief Legal & Regulatory Affairs Officer
Insured Retirement Institute



Liz Pujolas
Director, State Affairs
Insured Retirement Institute

cc: Commissioner Doug Ommen
Assistant Commissioner Andrew Hartnett